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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			ANDERSON, FOLASHADE	
		ART UNIT	PAPER NUMBER	
		3623		
		NOTIFICATION DATE		DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/733,442	<b>Applicant(s)</b> MADDUX, DANIEL
	<b>Examiner</b> FOLASHADE ANDERSON	<b>Art Unit</b> 3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 December 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-57 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-57 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 12/12/2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/1648)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date: _____	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

1. This is the first non-final office action in response to Applicant's submission filed on December 12, 2003. Currently, claims 1-57 are pending.

***Drawings***

2. Figures 1-4 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "23" of figure 2 has been used to designate both test taker and test maker. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

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informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because the alignment of "21" makes it hard to understand the notion. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

5. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 101***

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 39 - 57 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed to a computer program product configured to host instructions configured to enable a processor which makes it unclear as to whether or not the program product actually comprises instructions and also makes it unclear whether or not the instructions are actually executable. For a computer program product to be deemed statutory it must comprise executable instructions and be tangibly embodied on a computer readable medium.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim uses the terms "knowledge goal" and "knowledge self assessment" however Applicant has not disclosed the meaning of these terms. For purposes of examination the terms will be interpreted to mean educational need and a user tailor testing.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 19, 20, 38, 39 and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617).

In regards to claims 1, 20, and 39 Sweitzer teaches a **computer-based method, comprising steps of:**

- **receiving a request for said assessment** (col. 3, lines 1-5; where the requestor is author);
- **presenting a test corresponding to said requested assessment** (col. 3, lines 1-5; where the requestor is author); and
- **deriving a dynamic question for inclusion from an electronic archive for inclusion in said test,** (figure 1 and col. 9, lines 44-47, where the memory of the system and modification of existing problems implies an archive) **said dynamic question including a stem question and one of a stem question formula, a stem question range, a stem question variable, and a stem question constant** (figure 3, col. 11, lines 13-21 and col. 12, lines 24-38).

While the Examiner understand the context of the instant invention is directed toward the creation and implantation of assessment thorough the use of a computer enabled system and Sweitzer context is that of a computer implanted method and

system of the paper administration assessment in the analogous arena of mathematic test preparation it would have been obvious to one of ordinary skill in the art at the time the invention was made to assess the user abilities on the computer presentation rather than via paper (col. 2, lines 10-11).

Further in light of the recent KSR decision KSR International Co. v. Teleflex Inc 550 U.S. , 82 USPQ2d 1385. The inventive step of assessing via a computer system is obvious in that it applies a known technique to known method i.e. the method disclosed by Sweitzer.

Similarly claims 20 and 39, which are direct to a system and product for implementing claim 1, are essentially the same as claim 1 and are therefore reject for substantially the same reasons given above with regard to claim 1.

In regards to claim 19, 38 and 57 Sweitzer teaches

- **said step of receiving a request for said assessment includes receiving a request for a group assessment** col. 3, lines 1-5; where the requestor is author); and
- **said step of presenting a test corresponding to said requested assessment includes presenting a group assessment comprising a plurality of assessments** (col.3, lines 1-5; where the requestor is author), **each of said plurality of assessments including one of**
  - **a unique stem question** (fig. 3, #42),
  - **a common stem question** (fig. 3, #40),
  - **a common stem question range** (fig. 3, #38),

- **a common stem question variable** (fig. 3, #36), and
- **a common stem question constant** (fig. 3 #42, where the denominator is the constant in the shown example).

Sweitzer does not teach **a group identifier**.

Official notice is taken that **a group identifier** was old and well known technique used in the art at the time the invention was made for example in the context of Sweitzer which matches test to test answer (col.18, lines 52-55) use of the system i.e. a high school teacher might want to give each class period a different test to prevent the sharing of answers between classes among the students. As such each class period would be the group identifier used to associate the test to the class thus ensuring the proper answer key was used in the grading process.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the old and well known technique of a group identifier to modify the invention of Sweitzer for the purpose of preventing cheating (Sweitzer col.2, lines 4-6).

12. Claims 2-7, 10-15, 21-26, 29-34, 40-45 and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617) as applied to claims 1, 20 and 39 above, and further in view of Miele (US Patent 7,286,793).

In regards to claims 2, 21 and 40 Sweitzer does not expressly disclose **wherein said test also includes a static question**.

Miele implies **wherein said test also includes a static question** (col. 15, lines 9-13; where information request would be an example of a static type question) in an analogous art to perform analysis on one or more attributes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of Miele in the invention of Sweitzer to allow for the generation of statistical analysis of one or more attributes (Miele col. 4, lines 32-36).

Similarly claims 21 and 40, which are direct to a system and product respectively for implementing claim 2, are essentially the same as claim 2 and are therefore rejected for substantially the same reasons given above with regard to claim 2.

In regards to claims 3, 22 and 41 while neither Sweitzer nor Miele explicitly teaches **receiving and storing a user identification and an assessment identifier**. Both teach matching encoding test to allow for matching to test answers (Sweitzer col. 18, lines 51-55 and Meile col. 3, lines 56-69).

However official notice is taken that **receiving and storing a user identification and an assessment identifier** was a common, old and well known manual as well as electronic practice in the art at the time the invention was made in order to match test responses to the proper test answer key and allow for the return of corrected responses to the test takers. For example when one takes the law school admission test (LSAT) the test taker must encode the answer sheet with their law school admission council (LSAC) account number and the test identification number in order to ensure that the

proper answer key is used to score the test and that the results are returned to the proper test taker.

It would have been obvious to use the old well known practice of **receiving and storing a user identification and an assessment identifier** in the invention of Sweitzer to prevent testing duplication (Sweitzer col. 2, lines 56-60).

Similarly claims 22 and 41, which are direct to a system and product respectively for implementing claim 3, are essentially the same as claim 3 and are therefore rejected for substantially the same reasons given above with regard to claim 3.

In regards to claims 4, 23, and 42 Sweitzer teaches **an assessment level** (col. 10, lines 39-45)

Sweitzer does not expressly teach **wherein said assessment identifier comprises at least one of:**

- **an assessment topic;**
- **an assessment sub-topic;**
- **a knowledge goal; and**
- **a knowledge self-assessment.**

Meile teaches in an analogous art **wherein said assessment identifier comprises at least one of:**

- **an assessment topic** (col. 3, lines 50-55);
- **an assessment sub-topic** (col. 3, lines 50-55);
- **a knowledge goal** (col. 15, lines 40-44; where individual's educational needs is the equivalent of a knowledge goal); **and**

- **a knowledge self-assessment** (col. 15, lines 40-44; where individual tailored testing is the equivalent of knowledge self-assessment).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Meile in the invention of Sweitzer for the purpose of increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 23 and 42, which are direct to a system and product respectively for implementing claim 4, are essentially the same as claim 4 and are therefore reject for substantially the same reasons given above with regard to claim 4.

In regards to claims 5, 24 and 43 Switzer teaches **dynamically creating said test from said electronic archive in correspondence with a predetermined test creation rule** (col. 12, lines 24-30 where variation rules (test creation rule) allow for the dynamic creation and predetermined in the step of authoring).

Switzer does not teach **said predetermined test creation rule configured to enable a correlation between a test characteristic and one of said user identification and said assessment identifier.**

Meile teaches **said predetermined test creation rule configured to enable a correlation between a test characteristic and one of said user identification and said assessment identifier** (col. 15, lines 9-15; where meeting the required input parameters is the equivalent of the correlation ) in an analogous art for the purpose of encoding and assemble an examination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Meile in the invention of Sweitzer for the purpose of increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 24 and 43, which are direct to a system and product respectively for implementing claim 5, are essentially the same as claim 5 and are therefore rejected for substantially the same reasons given above with regard to claim 5.

In regards to claims 6, 25 and 44 Switzer teaches **wherein said test characteristic comprises:**

- **a number of questions** (col. 18, lines 18-21);
- **a test difficulty level** (col. 10, lines 40-45);
- **a question sequence** (col. 9, lines 56-59 and col. 18, lines 23-24); and
- **a question grouping** (col. 9, lines 56-59);.

Switzer does not explicitly teach **a test duration**.

Meile teaches **a test duration** (col. 14, lines 17-22) in an analogous art for the purpose testing as a function of time.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Meile to modify the invention of Switzer to increase efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 25 and 44, which are direct to a system and product respectively for implementing claim 6, are essentially the same as claim 6 and are therefore rejected for substantially the same reasons given above with regard to claim 6.

In regards to claims 7, 26 and 45 Switzer teaches **incorporating said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant into said test in correspondence** (figure 3, col.11, lines 13-21 and col. 12, lines 24-38). Additionally Switzer teaches that sequencing student files and questions and answers (col. 18, lines 52-54).

Switzer does not expressly teach a **predetermined question selection rule, said predetermined question selection rule configured to enable a correlation between said stem question and said user identification and said assessment identifier.**

Miler teaches a **predetermined question selection rule, said predetermined question selection rule configured to enable a correlation between said stem question and said user identification and said assessment identifier** (col. 15, lines 9-15; where meeting the required input parameters is the equivalent of the correlation) in an analogous art for the purpose of encoding and assembling an examination.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Meile to modify the invention of Sweitzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Meile col. 15, lines 36-38).

Similarly claims 26 and 45, which are direct to a system and product respectively for implementing claim 7, are essentially the same as claim 7 and are therefore reject for substantially the same reasons given above with regard to claim 7.

In regards to claims 10, 29 and 48 Sweitzer does not expressly teach

- **evaluating an answer to one of said dynamic question and said static question to create said assessment; and**
- **providing one of said assessment and a recommendation to one of a test taker, a test creator, an employee manager, and a vendor, said recommendation corresponding to said assessment.**

Miele teaches in an analogous art:

- **evaluating an answer to one of said dynamic question and said static question to create said assessment** (col. 15, lines 9-15); and
- **providing one of said assessment and a recommendation to one of a test taker, a test creator, an employee manager, and a vendor, said recommendation corresponding to said assessment** (col. 15, lines 23-28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Miele to modify the invention of Sweitzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Miele col. 15, lines 36-38).

Similarly claims 29 and 48, which are direct to a system and product respectively for implementing claim 10, are essentially the same as claim 10 and are therefore reject for substantially the same reasons given above with regard to claim 10.

In regards to claim 11, 30 and 49 Sweitzer does not expressly teach **providing said recommendation based on a predetermined recommendation selection rule, said predetermined recommendation rule configured to enable a correlation between an answer provided in response to said dynamic question to said recommendation.**

Miele teaches **providing said recommendation based on a predetermined recommendation selection rule, said predetermined recommendation rule configured to enable a correlation between an answer provided in response to said dynamic question to said recommendation** (fig. 6, and col. 15, lines 25-36).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Miele to modify the invention of Sweitzer to increasing efficiency and reduce the cost with which a topic may be taught to the individual (Miele col. 15, lines 36-38).

Similarly claims 30 and 49, which are direct to a system and product respectively for implementing claim 11, are essentially the same as claim 11 and are therefore rejected for substantially the same reasons given above with regard to claim 11.

In regards to claims 12-14, 31-33, and 50-52 which are directed toward the

- **creating said predetermined test creation (question selection, recommendation selection) rule; and**
- **storing said predetermined test creation question selection, recommendation selection) rule in said electronic archive.**

Sweitzer teaches creating for example variation rules (col. 12, lines 57-60) and storing variation rules (col. 12, lines 24-27) however Sweitzer does not expressly teach **creating said predetermined test creation (question selection, recommendation selection) rule or storing said predetermined test creation question selection, recommendation selection) rule in said electronic archive**; however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP § 2106.

Similarly claims 31-33 and 50-52, which are direct to a system and product respectively for implementing claims 12-14, are essentially the same as claims 12-14 and are therefore reject for substantially the same reasons given above with regard to claims 12-14.

In regards to claims 15, 34 and 53 Sweitzer teaches

- **creating said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant** (figure 3, col.11, lines 13-21 and col. 12, lines 24-38); and

- **storing said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant in said electronic archive** (figure 1 and col. 9, lines 44-47, where the memory of the system and modification of existing problems implies an archive).

Similarly claims 34 and 35, which are direct to a system and product respectively for implementing claim 15, are essentially the same as claim 15 and are therefore rejected for substantially the same reasons given above with regard to claim 15.

13. Claims 8, 9, 18, 27, 28, 37, 46, 47 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617) and Miele (US Patent 7,286,793) as applied to claims 7, 26 and 45 above, and further in view of Ho et al (5,779,486)

In regards to claims 8, 27 and 46 neither Sweitzer nor Miele expressly teach **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and a previous test result.**

Ho teaches **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and a previous test result** (col. 2, lines 23-33) in an analogous art for the purpose of tracking progress as a function of time.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Ho modify the invention of Sweitzer in order

to provide feedback in order to more precisely assess and to enhance the users understanding in a subject (Ho col. 1, lines 53-57)

Similarly claims 27 and 46, which are direct to a system and product respectively for implementing claim 8, are essentially the same as claim 8 and are therefore reject for substantially the same reasons given above with regard to claim 8.

In regards to claim 9, 28 and 47 neither Sweitzer nor Miele expressly teaches **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and another question presented during a previous test.**

Ho teaches **wherein said predetermined question selection rule is further configured to enable a correlation between said user identification and another question presented during a previous test** (col. 5, lines 4-27) in an analogous art for the purpose of tracking progress as a function of time.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Ho modify the invention of Sweitzer in order to provide feedback in order to more precisely assess and to enhance the users understanding in a subject (Ho col. 1, lines 53-57)

Similarly claims 28 and 47, which are direct to a system and product respectively for implementing claim 9, are essentially the same as claim 9 and are therefore reject for substantially the same reasons given above with regard to claim 9.

- **creating said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant; and**
- **storing said stem question and one of said stem formula, said stem question range, said stem question variable, and said stem question constant in said electronic archive.**

In regards to claims 18, 37 and 56 neither Sweitzer nor Miele expressly teaches **storing said answer to one of said dynamic question and said static question in the electronic archive**

Ho teaches **storing said answer to one of said dynamic question and said static question in the electronic archive** (col. 4, lines 21-28) in analogous art for the purpose generating user progress reports.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teaching of Ho modify the invention of Sweitzer in order to provide feedback in order to more precisely assess and to enhance the users understanding in a subject (Ho col. 1, lines 53-57)

Similarly claims 37 and 56, which are direct to a system and product respectively for implementing claim 18, are essentially the same as claim 18 and are therefore rejected for substantially the same reasons given above with regard to claim 18.

14. Claims 16, 17, 35, 36, 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweitzer (US Patent 6,018,617) and Miele (US Patent 7,286,793) as

applied to claims 11, 30 and 49 above, and further in view of Lippman (US Patent 6,544, 042 B2)

In regards to claims 16, 35 and 54 Sweitzer does not expressly teach **providing a recommendation to purchase a product.**

Miele teaches **providing a recommendation** (col.15, lines 25-28); however Miele does not expressly teach that the recommendation is a **purchase a product.**

Lippman teaches **providing a recommendation to purchase a product** (col. 7, lines 33-36 and 62-65) in an analogous art for the purpose of providing recommended products directly to the user.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Lippman to modify the disclosure of Miele use in the invention of Sweitzer to act immediately on the recommendation for the appropriate study aids based on the analyzes of the user's score (Lippman col. 1, lines 40-45).

Similarly claims 35 and 54, which are direct to a system and product respectively for implementing claim 16, are essentially the same as claim 16 and are therefore reject for substantially the same reasons given above with regard to claim 16.

In regards to claims 17, 36 and 55 neither Sweitzer nor Miele teaches **receiving and storing payment information**

Lippman teaches **receiving and storing payment information** (col. 6, line 8-14, where a subscription implies the storing of payment information)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the disclosure of Lippman to modify the disclosure of Miele use in the invention of Sweitzer to act immediately on the recommendation for the appropriate study aids based on the analyzes of the user's score (Lippman col. 1, lines 40-45).

Similarly claims 36 and 55, which are direct to a system and product respectively for implementing claim 17, are essentially the same as claim 17 and are therefore rejected for substantially the same reasons given above with regard to claim 17.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- L'Allier (US Patent 6,039,575) teaches an interactive learning system which creates subsequent test and study materials based on a pretest
- Wallace (US Patent 6,688,889 B2) teaches the science behind creating supplemental study material and aids
- Kershaw (US Patent 5,827,070) teaches a computer based testing method
- Nichols (US Patent 7,194,444 B1) teaches goal oriented learning

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FOLASHADE ANDERSON whose telephone number is (571)270-3331. The examiner can normally be reached on Monday through Thursday 8:00 am to 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R. Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Folashade Anderson/  
Examiner, Art Unit 3623

/C. Michelle Tarae/  
Primary Examiner, Art Unit 3623